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WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
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ORIGINAL



ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission  
**DOCKETED**

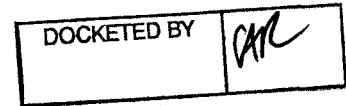
NOV - 5 2004

DATE: November 5, 2004

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKET NO: T-03006A-04-0388

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Order on:

METROPOLITAN FIBER SYSTEMS OF ARIZONA, INC.  
(CC&N CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 15, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 23 & 24, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF  
9 METROPOLITAN FIBER SYSTEMS OF  
10 ARIZONA, INC. TO DISCONTINUE PRIVATE  
11 LINE TELECOMMUNICATIONS SERVICES  
12 AND CANCEL ITS CERTIFICATE OF  
13 CONVENIENCE AND NECESSITY.

DOCKET NO. T-03006A-04-0388

DECISION NO. \_\_\_\_\_

**ORDER**

14 Open Meeting  
15 November 23 and 24, 2004  
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the  
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. In Decision No. 59812 (August 22, 1996), the Commission granted to Metropolitan  
22 Fiber Systems of Arizona, Inc. ("Applicant") a Certificate of Convenience and Necessity ("CC&N")  
23 authorizing it to provide competitive intrastate telecommunications service within the exchange  
24 served by U S West Communications, Inc. as a private line telecommunications service provider.

25 2. Decision No. 66595 (December 9, 2003) approved a reorganization plan that  
26 WorldCom Inc. filed on October 3, 2003. Decision No. 66595 ordered WorldCom Inc. to submit an  
27 application to cancel the CC&Ns of the Applicant and two other of WorldCom Inc.'s subsidiaries<sup>1</sup>  
28 that were to be merged into MCImetro Access Transmission Services, LLC ("MCImetro") under the  
approved reorganization plan. Decision No. 66595 also required WorldCom Inc. to re-file  
Applicant's tariff with the revised company name of MCImetro.

3. On May 11, 2004, MCImetro filed with the Commission Advice Letter No. 04-01

<sup>1</sup> Brooks Fiber Communications of Tucson, Inc. and MCI WorldCom, Inc. The CC&N of Brooks Fiber Communications of Tucson, Inc. was cancelled in Decision No. 67179 (August 10, 2004) and the CC&N of MCI WorldCom Communications, Inc. was cancelled in Decision No. 67278 (October 5, 2004).

1 renaming Applicant's Tariff No. 1 as MCImetro's Arizona Tariff No. 5, and grandfathering all  
2 services provided in Applicant's Tariff No. 1.

3 4. On May 24, 2004, Applicant filed the above-captioned application in compliance with  
4 Decision No. 66595.

5 5. On September 29, 2004, the Commission's Utilities Division Staff ("Staff") filed a  
6 Staff Report in this matter, recommending approval of Applicant's request to cancel its CC&N.

7 6. The application stated that as of May 24, 2004, all of Applicant's customers had  
8 migrated to MCImetro.

9 7. A.A.C. R14-2-1107(A) requires any telecommunications company providing  
10 competitive local exchange or interexchange service on a resold or facilities-based basis that intends  
11 to discontinue service or to abandon all or a portion of its service area to file an application for  
12 authorization with the Commission setting forth the following:

13 1) Any reasons for the proposed discontinuance of service or abandonment of service  
14 area;

15 2) Verification that all affected customers have been notified of the proposed  
16 discontinuance or abandonment, and that all affected customers will have access to an alternative  
17 local exchange service provider or interexchange service provider;

18 3) Where applicable, a plan for the refund of deposits collected; and

19 4) A list of all alternative utilities providing the same or similar service within the  
20 affected geographic area.

21 8. In accordance with A.A.C. R14-2-1107(A)(1), the application set forth the reason for  
22 its proposed discontinuance of services. As approved in Decision No. 66595, Applicant's operations  
23 were merged into MCImetro.

24 9. In accordance with A.A.C. R14-2-1107(A)(2), the application verified that all affected  
25 customers were notified that they would be migrated to MCImetro effective on or after December 31,  
26 2003. The application verified that all affected customers will have access to an alternative service  
27 provider.

28 10. In accordance with A.A.C. R14-2-1107(A)(3), the application verified that any

1 deposits held by Applicant will now be held by MCImetro pursuant to the relevant tariff provisions.

2 11. In accordance with A.A.C. R14-2-1107(A)(4), the application stated that Qwest  
3 Corporation and other service providers are certificated in the affected geographic area.

4 12. A.A.C. R14-2-1107(B) requires an applicant to publish legal notice of the application  
5 in all counties affected by the application. Under A.A.C. R14-2-1107(C), once proper notice is  
6 effected and if no objection is filed, the Commission may grant the application without a hearing.

7 13. Applicant has not published legal notice in all counties affected by the application.  
8 Instead, Applicant has requested a waiver of the notice provisions contained in A.A.C. R14-2-1107 to  
9 the extent necessary, on the basis that notice was already provided to all affected customers prior to  
10 the merger of Applicant's service operations into MCImetro.

11 14. The Staff Report stated that Applicant's requested waiver of A.A.C. R14-2-1107  
12 should be granted because Applicant currently has no customers. However, as explained in Decision  
13 No. 67404 (November 2, 2004), it would render A.A.C. R14-2-1107 meaningless and would run  
14 afoul of the rule's intent and plain language to exempt an applicant from the requirements of the rule  
15 because it has no customers due to its discontinuance of service.

16 15. The application was filed in fulfillment of a requirement of Decision No. 66595,  
17 which determined that the reorganization under which Applicant's service operations were merged  
18 into MCImetro was in the public interest. The reorganization approved by Decision No. 66595  
19 included the transfer of Applicant's customers to MCImetro, such that Decision No. 66595  
20 effectively approved the customer transfer to MCImetro and discontinuance of service by Applicant.  
21 The public notice requirements of A.A.C. R14-2-1107(B) should therefore be waived under the  
22 unique circumstances of this case. However, this waiver should not be considered precedent for other  
23 carriers that wish to discontinue service. Absent the unique facts presented in this case, we will  
24 strictly enforce the requirements set forth in A.A.C. R14-2-1107.

25 16. The Staff Report indicated that there are no open complaints, inquiries or opinions  
26 concerning Applicant.

27 17. The Staff Report indicated that numerous other carriers offer services similar to those  
28 which Applicant is requesting authority to discontinue.

### CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. A.A.C. R14-2-1107 applies to any telecommunications company providing competitive local exchange or interexchange service on a resold or facilities-based basis that intends to discontinue service or to abandon all or a portion of its service area.

3. The Commission has jurisdiction over Applicant and the subject matter of the application.

4. The cancellation of Applicant's CC&N is in the public interest.

5. The notice requirements of A.A.C. R14-2-1107(B) and (C) should be waived, under the unique circumstances of this case.

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**ORDER**

IT IS THEREFORE ORDERED that the application of Metropolitan Fiber Systems of Arizona, Inc. for discontinuance of private line telecommunications services and for cancellation of its Certificate of Convenience and Necessity is hereby granted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
BRIAN C. McNEIL  
Executive Secretary

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

TW:mlj

SERVICE LIST FOR:

METROPOLITAN FIBER SYSTEMS OF ARIZONA,  
INC.

DOCKET NO.:

T-03006A-04-0388

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